United Nations CRPD/C/CHL/CO/1

Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Chile*

I. Introduction

1. The Committee considered the initial report of Chile (CRPD/C/CHL/1) at its 238th and 239th meetings (CRPD/C/SR.238 and 239), held on 31 March and 1 April 2016. At its 255th meeting, held on 13 April 2016, the Committee adopted the following concluding observations.

2. The Committee welcomes the initial report of Chile and thanks the State party for its written replies (CRPD/C/CHL/Q/1/Add.1) to the Committee's list of issues (CRPD/C/CHL/Q/1).

3. The Committee appreciates the constructive dialogue that took place during its consideration of the report and commends the State party for the strength of its delegation, which was headed by the Under-Secretary for Social Policy Assessment of the Ministry of Social Development and included the Permanent Representative of Chile to the United Nations Office at Geneva, delegates from the National Service for Persons with Disabilities and representatives of various ministries.

II. Positive aspects

4. The Committee commends the State party on bringing about institutional change through the establishment of the National Service for Persons with Disabilities in 2010, the approval of the inclusion of disability in the Anti-Discrimination Act (Act No. 20.609 of 2012, Establishing Measures against Discrimination) and the establishment in 2009 of the National Human Rights Institute, an independent body whose mandate is to promote and protect the human rights of the Chilean population.

* Adopted by the Committee at its fifteenth session (29 March-21 April 2016).

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III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1-4)

5. The Committee is concerned about the lack of a strategy to harmonize legislation on persons with disabilities and about the continued use of the medical model and derogatory terms, such as "invalidity", "incapable" and "of unsound mind", in current legislation, including the Civil Code and Act No. 20.422 of 2010.

6. **The Committee recommends that the State party adopt a plan to fully harmonize laws and policies, including the Constitution and the Civil Code, with a view to bringing them into line with the Convention and promoting a human rights-based approach to disability.**

7. The Committee notes that the criteria for classifying and officially recognizing impairments are not standardized or in line with the principles of the Convention, since they are based on the impairment and do not take into account the barriers that persons with disabilities face.

8. **The Committee recommends that the State party review the criteria for the classification and certification of disabilities and ensure that they reflect a rights-based approach.**

9. The Committee is concerned that consultation with persons with disabilities is not a mandatory step in the adoption of policies and programmes that affect them.

10. **The Committee recommends that the State party set up a mandatory mechanism for standing consultations with persons with disabilities, including women and children, through their organizations, on the adoption of laws and policies and on other issues of relevance to them.**

B. Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

11. The Committee is concerned that the definition of reasonable accommodation does not comply with article 2 of the Convention and that the State party's legislation does not consider the denial of reasonable accommodation to be a form of discrimination against persons with disabilities in areas other than employment. It is also concerned at the lack of policies to combat multiple and intersectional discrimination.

12. **The Committee recommends that the State party revise the definition of reasonable accommodation and recognize in its legislation the denial of reasonable accommodation as a form of discrimination on grounds of disability in all spheres of life. It also recommends that the State party include multiple and intersectional discrimination in its anti-discrimination legislation, provide appropriate remedies and impose sanctions for non-compliance.**

Women with disabilities (art. 6)

13. The Committee is concerned that the State party's policies on gender and on disability do not cover women with disabilities and that there are no policies or strategies specifically designed for them.

14. The Committee recommends that the State party include women with disabilities in policies on gender and on disability and implement policies and strategies specifically

designed for them; these actions should be taken in close consultation with women and girls with disabilities through their representative organizations.

Children with disabilities (art. 7)

15. The Committee is concerned that laws relating to children do not expressly include the principle of non-discrimination and, in particular, that this shortcoming disproportionately affects children with disabilities. It is also concerned that there are no protection measures in place to prevent children with disabilities from being abandoned or placed in institutions because of a lack of information and support for families or poverty.

16. **The Committee recommends that the principle of non-discrimination and special protection for children with disabilities be included in the bill on a system of safeguards of children's rights currently before the National Congress, with a view to strengthening the protection of their rights and promoting equality of opportunity for family, community and social inclusion. The bill should also provide for the allocation of sufficient resources for its effective implementation.**

Awareness-raising (art. 8)

17. The Committee is concerned that the State party's efforts to combat biased views and negative stereotypes of persons with disabilities remain insufficient, given the existence of public campaigns such as Teletón (a recipient of public funding), which reinforce the charity-based model of disability.

18. **The Committee urges the State party to combat stereotypes and discrimination in the media, to launch public awareness campaigns to promote persons with disabilities as rights holders rather than objects of charity and to ensure that public funds are not used to contrary ends.**

Accessibility (art. 9)

19. The Committee is concerned about the scant progress in implementing Act No. 20.422 on accessibility and about the lack of mechanisms to lodge complaints of violations of the rights of persons with disabilities in relation to inaccessibility.

20. **The Committee recommends that the State party adopt a general accessibility plan that takes into account the Committee's general comment No. 2 on accessibility (art. 9 of the Convention) and covers the accessibility of transportation, public buildings and facilities, information and communication, in both urban and rural areas. The plan should provide for specific time frames, penalties for non-compliance and the involvement of organizations of persons with disabilities at all stages of its implementation, particularly the monitoring of compliance. The Committee also recommends that the State party bear in mind the linkages between article 9 of the Convention and Sustainable Development Goal 11, especially targets 11.2 and 11.7.**

Situations of risk and humanitarian emergencies (art. 11)

21. The Committee is concerned about the limited distribution of manuals and practical guides on support for persons with disabilities in disaster risk situations, the lack of awareness among civil protection personnel of the rights of persons with disabilities and the inadequate accessibility of evacuation routes at the national level. It is further concerned about the inaccessibility of services and information in the area of disaster risk reduction for persons with disabilities.

22. **The Committee recommends that the State party ensure ongoing training in the rights of persons with disabilities for civil protection personnel. The training should**

include the distribution of instruments on the inclusion of persons with disabilities in disaster risk reduction strategies, the provision of digital communication services, provision for accessibility in the design of infrastructure and evacuation routes and information on disaster risk reduction. It also recommends that the State party pay particular attention to the accessibility of information, including through Braille, sign language and alternative media and formats, and that it take into account the Sendai Framework for Disaster Risk Reduction.

Equal recognition before the law (art. 12)

23. The Committee is concerned about the continued applicability of the Civil Code of 1857, which denies persons with disabilities the right to legal capacity, and of Act No. 18.600 concerning the procedure for revoking legal capacity on the basis of a psychiatric report.

24. **The Committee requests the State party to repeal all legal provisions that partially or completely limit the legal capacity of adults with disabilities, and to adopt specific measures to establish a supported decision-making model that respects the autonomy, will and preferences of persons with disabilities, in keeping with article 12 of the Convention and the Committee's general comment No. 1 (2014).**

25. The Committee is concerned that, under article 15 of Act No. 20.584, persons with disabilities, especially those whose legal capacity has been revoked and those who have been institutionalized on grounds of mental disability, are denied the right to informed consent in the context of medical treatment or surgery with irreversible effects.

26. **The Committee recommends that the State party amend and repeal provisions that restrict the free and informed consent of all persons with disabilities, including those whose legal capacity has been revoked and who are under guardianship and those living in institutions, and that it adopt the necessary regulations to ensure the full exercise of free and informed consent with respect to any medical or scientific procedure.**

Access to justice (art. 13)

27. The Committee is concerned that no procedural accommodations have been made to ensure access to justice for all persons with disabilities. It is also concerned about the barriers, especially of a legal nature, that prevent persons whose legal capacity has been revoked or who live in institutions from effectively participating in legal proceedings.

28. **The Committee urges the State party to adopt the necessary legislative, administrative and judicial measures to eliminate all restrictions on the ability of persons with disabilities to participate effectively in proceedings of any kind. It also recommends that the State party make reasonable procedural accommodations, including the provision of personal or intermediary assistance, to ensure that persons with disabilities can effectively participate, in various capacities, in legal proceedings.**

Liberty and security of person (art. 14)

29. The Committee is concerned about the use of the criterion of "dangerousness", which is determined on the basis of a real or perceived psychosocial disability, to decide whether persons should be deprived of their liberty. It is also concerned about the large number of persons declared not criminally responsible who are held for extended periods in psychiatric hospitals, most of them in the Philippe Pinel Hospital in Putaendo, and about the unjustified and prolonged waiting period before the grounds for confinement are reviewed by a judge, in violation of due process guarantees.

30. **The Committee urges the State party to revise the criterion of dangerousness that determines forced confinement in psychiatric centres. In addition, it recommends that the State party review and amend the Criminal Code in order to effectively safeguard due process guarantees for persons with disabilities, especially those with psychosocial and/or intellectual disabilities, and that it provide them with the necessary support during legal proceedings, taking into account their gender and age.**

31. The Committee is concerned about the confinement of persons in psychiatric hospitals or other types of long-term residential centres on grounds of impairment, at the request of the family and without the free and informed consent of the person concerned.

32. **The Committee recommends that the State party prohibit forced institutionalization on grounds of disability.**

Freedom from torture (art. 15)

33. The Committee is deeply concerned about evidence that practices such as psychosurgery, electroconvulsive therapy, extended isolation in cells without heating or basic services, physical restraints and other types of treatment deemed to be cruel, inhuman or degrading are employed in the State party with the sole purpose of "disciplining" or "correcting deviant behaviour" in persons with psychosocial disabilities.

34. **The Committee recommends that the State party expressly prohibit the use of practices deemed to be "disciplinary" or "corrective" against persons with psychosocial disabilities who are living in public or private psychiatric centres or otherwise deprived of their liberty. It requests the State party to launch investigations into reported events with a view to establishing administrative and criminal responsibility. It also requests the State party to rescind Ministry of Health Exempt Resolution No. 656 of 2002 and review the mandate of the National Commission for the Protection of the Rights of Persons with Mental Illness with a view to ensuring that it plays a preventive and protective role in respect of those rights, in keeping with the Convention.**

35. The Committee notes the lack of police and security force protocols on how to deal with persons with disabilities, which has resulted in violations of their rights and even death as a consequence of abuse or neglect.

36. **The Committee recommends that the State party: investigate the reported cases of physical ill-treatment that constitute cruel, inhuman or degrading treatment and violations of the rights of persons with disabilities by Carabineros and members of other security forces; establish administrative and criminal responsibility in such cases; and adopt protocols that guarantee full respect for the human rights of persons with disabilities, taking into account their diversity.**

37. The Committee is concerned about the lack of a national mechanism for the prevention of torture and of other mechanisms tasked with overseeing centres of deprivation of liberty and monitoring the human rights situation of detainees.

38. **The Committee requests the State party to establish a national mechanism for the prevention of torture in compliance with its obligations as a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to include monitoring visits to psychiatric centres and long-term residential centres for persons with disabilities in the mechanism's mandate. In the interim, the Committee urges the State party to facilitate monitoring visits to such centres by independent authorities, such as judges and the National Human Rights Institute.**

Freedom from exploitation, violence and abuse (art. 16)

39. The Committee is concerned that the law and policies on the prevention of and protection against violence do not include women and girls with disabilities. It is particularly concerned about the lack of a differentiated approach, given the greater risk that they face, due to their disability, of being subjected to sexual violence, incest, physical and verbal abuse, abandonment and neglect. The Committee is also concerned that there is no independent protection and monitoring mechanism or register of cases of violence.

40. **The Committee recommends that the State party include women, children and older persons with disabilities in policies to protect against violence that take into account gender, disability and age. It also requests the State party to set up an independent oversight mechanism to register reported cases and monitor service providers.**

Protecting the integrity of the person (art. 17)

41. The Committee is concerned by the fact that sterilizations continue to be performed in the State party on persons with disabilities, especially women and girls, without their free and informed consent and at the mere request of their families or guardians, and by evidence that the procedure is commonly performed on persons with psychosocial disabilities admitted to psychiatric centres.

42. **The Committee requests the State party to amend Act No. 20.584 and Decree No. 570 to require in all cases, without exception, the free and informed consent of persons with disabilities, including those whose legal capacity has been revoked, as an essential prerequisite for any surgery or medical treatment, especially those of an invasive nature and whose effects are irreversible, such as sterilization and procedures on intersex children.**

Living independently and being included in the community (art. 19)

43. The Committee is concerned at the scant progress made in implementing the provisions of Act No. 20.422 with regard to support for the independent living of persons with disabilities given the lack of community-based support systems, which compels them to enter institutions or to live in poverty. It is also concerned about the lack of a plan to deinstitutionalize persons with disabilities and facilitate their transition to a life of inclusion in the community.

44. **The Committee recommends that the State party launch a plan for the deinstitutionalization of persons with disabilities, especially those with intellectual or psychosocial disabilities, which includes provisions for their transition to an independent life in the community, with the necessary services and support, and which establishes specific time frames and provides for an adequate budget.**

Freedom of expression and opinion, and access to information (art. 21)

45. The Committee is concerned that Chilean Sign Language and the Braille system do not have official status in the State party. It is also concerned at the failure to implement standards (Act No. 20.422) on the accessibility of official television programmes on elections or in situations of emergency or natural disasters, and at the ineffectiveness of administrative and judicial mechanisms in cases of non-compliance.

46. **The Committee recommends that the State party give Chilean Sign Language and the Braille system official status and render accessible the transmission via all media of public information, in particular on national procedures of relevance to the entire population and on emergency situations and/or natural disasters.**

Respect for home and the family (art. 23)

47. The Committee is concerned about:

(a) The continued validity of Civil Code provisions that prevent persons with intellectual or psychosocial disabilities and blind or blind-deaf persons from marrying;

(b) Discrimination and the practice of denying the right to marry and to have a family where couples so wish;

(c) The lack of necessary support to enable persons with disabilities to exercise their reproductive rights under the same conditions as others, as demonstrated by the case of Valeria Riveros.

48. **The Committee recommends that the State party:**

(a) Repeal the discriminatory provisions limiting the possibility of marriage for persons with disabilities;

(b) Adopt the necessary support measures, including personal assistance, with a view to ensuring that persons with disabilities, especially women, can exercise their rights free from prejudice and under the same conditions as others; and

(c) Set up a review mechanism to restore custody of their children to women from whom it was revoked on grounds of their disability.

Education (art. 24)

49. The Committee is concerned that, notwithstanding the recent educational reform, inclusive education is not a priority for children and adults with disabilities, and that special and segregated forms of education prevail. It is also concerned at the lack of action by government authorities to promote inclusive higher education.

50. **The Committee recommends that the State party:**

(a) Implement a plan for transitioning towards inclusive education at all levels up to higher education, which provides for the training of teachers, the roll-out of comprehensive awareness-raising campaigns and the promotion of a culture of diversity;

(b) Provide personalized instruction and the necessary support and resources, such as Braille and sign language, to foster inclusion, in particular of students with intellectual or psychosocial disabilities;

(c) Ensure the accessibility of higher education institutions, including by facilitating reasonable accommodations in the admissions process and all other aspects of higher education;

(d) Bear in mind the linkages between article 24 of the Convention and Sustainable Development Goal 4, in particular targets 4.5 and 4.8.

Health (art. 25)

51. The Committee is concerned at the paucity of information on sexual and reproductive health that is available to persons with disabilities, especially women and girls and persons with intellectual and/or psychosocial disabilities.

52. **The Committee recommends that the State party ensure the accessibility of information and comprehensive services in the area of sexual and reproductive health throughout Chilean territory, including through sign language, accessible formats and adapted equipment and furnishings.**

53. The Committee is concerned that the mental health policy adopts a medical approach to disability and that medical personnel in that field are not trained in the rights of persons with disabilities.

54. **The Committee recommends that the State party adopt a rights-based policy on mental health with the participation of organizations of persons with disabilities, in particular psychosocial disabilities. It also recommends that medical personnel and therapists be trained in the rights of persons with disabilities.**

Habilitation and rehabilitation (art. 26)

55. The Committee is concerned about the limited coverage of the State party's activities in the area of rehabilitation. It is also concerned that public funds are allocated to private tax-exempt organizations that provide physical rehabilitation services to children with disabilities and that the services offered by such organizations are not universal.

56. **The Committee recommends that the State party prioritize the allocation of adequate resources to support the provision of rehabilitation services at the community level for the benefit of all persons with disabilities, from childhood to adulthood, and for the purpose of social and community inclusion. The Committee encourages the State party, when implementing these measures, to consult organizations of persons with disabilities, especially those that represent women, children, indigenous persons and individuals living in rural or remote areas.**

Work and employment (art. 27)

57. The Committee is concerned at the lack of labour market inclusion for persons with disabilities, and of specific strategies to promote their employment.

58. **The Committee recommends that the State party hasten the adoption of legislation on the inclusion of persons with disabilities in the labour market and adopt a wide-ranging strategy in that domain which contains specific indicators and time frames and includes women and young people with disabilities. The Committee further recommends that the State party bear in mind the linkages between article 27 of the Convention and target 8.5 of the Sustainable Development Goals and ensure that all persons, including persons with disabilities, obtain productive and decent employment, in keeping with the principle of equal pay for work of equal value.**

Adequate standard of living and social protection (art. 28)

59. The Committee is concerned about the low income of older persons with disabilities, who require greater support, and of persons with disabilities living in rural, remote or insular areas with scant access to basic services.

60. **The Committee recommends that the State party make disability allowances universally available with a view to ensuring that persons with disabilities attain a decent standard of living, including support services for their specific disability, and to mitigating the impact of disability induced poverty.**

Participation in political and public life (art. 29)

61. The Committee is concerned that the revocation of legal capacity might prevent persons with disabilities from exercising their right to vote and to take part in political life.

62. **The Committee recommends that the State party revise the electoral roll to ensure that no one is denied the right to vote on grounds of disability or limitation of their legal capacity.**

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

63. The Committee notes that the last National Disability Survey, conducted in 2015, did not cover persons with disabilities living in institutions, deprived of their liberty or in street situations or indigenous persons with disabilities. It further notes the lack of mechanisms to register cases of discrimination or violence against persons with disabilities.

64. **The Committee recommends that the State party collect and update data and statistics on persons with disabilities using a rights-based model. The data should be disaggregated by age, sex, type of impairment, ethnicity and geographical location and include the type of residence or institution and cases of discrimination or violence against those persons. These processes should be undertaken in consultation with organizations of persons with disabilities. The Committee also recommends that the State party bear in mind the linkages between article 31 of the Convention and Sustainable Development Goal 17, especially target 17.18.**

International cooperation (art. 32)

65. The Committee is concerned by the fact that the rights of persons with disabilities enshrined in the Convention are absent from the national implementation and monitoring of the 2030 Agenda for Sustainable Development.

66. **The Committee recommends that the State party mainstream the rights of persons with disabilities in its implementation and monitoring of the 2030 Agenda for Sustainable Development at the national level and that these processes be carried out in close collaboration with organizations of persons with disabilities.**

National implementation and monitoring (art. 33)

67. The Committee notes that the State party has not established an independent mechanism to monitor the implementation of the Convention or defined the role of civil society, especially organizations of persons with disabilities, in such implementation and monitoring.

68. **The Committee requests the State party to establish an independent mechanism to monitor the implementation of the Convention which satisfies the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It further recommends that the State party involve organizations of persons with disabilities in a meaningful way in both implementing and monitoring compliance with the Convention.**

IV. Follow-up

Dissemination of information

69. The Committee requests that the State party provide information, within 12 months of the adoption of the present concluding observations and in accordance with article 35 (2) of the Convention, on the measures taken to implement the Committee's recommendations contained in paragraphs 34 (on practices with regard to persons with psychosocial disabilities living in institutions) and 38 (on a national mechanism for the prevention of torture and monitoring visits).

70. The Committee requests the State party to implement the recommendations contained in the present concluding observations. It recommends that the State party

transmit the concluding observations for consideration and action to members of the Government and parliament, officials in relevant ministries, members of the judiciary and relevant professional groups, such as education, medical and legal professionals, as well as to local authorities and the media, using modern social communication strategies.

71. The Committee strongly encourages the State party to involve civil society organizations, in particular organizations of persons with disabilities, in the preparation of its second periodic report.

72. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, and to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, and to make them available on the government website on human rights.

Next periodic report

73. The Committee requests the State party to submit its combined second to fourth periodic reports by 29 August 2022 and to include in them information on the implementation of the recommendations made in the present concluding observations. The Committee invites the State party to consider submitting the above-mentioned reports under the Committee's simplified reporting procedure, according to which the Committee prepares a list of issues at least one year prior to the due date set for the report of a State party. The replies of a State party to such a list of issues constitute its report.